

**Diversion from Prosecution to Social
Work in Scotland: A Snapshot of
Current Patterns and an
Examination of Practice in Three CJAs**

Ben Bradford and Sarah MacQueen

**Scottish Centre for Crime and Justice Research,
University of Edinburgh**

January 2011



COPYRIGHT NOTICE

This publication is copyright SCCJR. Permission is granted to reproduce any part or all of this report for personal and educational use only. Commercial copying, hiring or lending is prohibited. Any material used must be fully acknowledged, and the title of the publication, authors and date of publication specified.

Copyright © SCCJR 2011

ISBN: 978-0-9563526-7-5

ACKNOWLEDGEMENTS

The research team would like to thank all those who both participated in and helped to facilitate this study.

EXECUTIVE SUMMARY

Introduction

- The Scottish Government commissioned the Scottish Centre for Crime and Justice Research to undertake a small-scale study into the use of diversion from prosecution to social work.
- To provide this an examination of available data was undertaken, along with a review of publicly accessible policy documentation and guidance. Interviews with Procurators Fiscal and a survey of social work staff in key local authorities were also conducted.
- The following is a summary of key findings from these exercises.

Review of data available on Scottish Government website

- The number of cases diverted from prosecution by Procurators Fiscal fell between 2005/06 and 2007/08. However, this did not continue into 2008/09, and the recent reduction in cases diverted does not as yet appear to constitute a trend.
- There is significant variation in the use of diversion across Scotland and over time that cannot be accounted for by population size or crime rates.

Review of Policy Relating to Diversion from Prosecution to Social Work

- There is a lack of publicly available information and guidance, at both national and local level, on the use of diversion from prosecution to social work.
- In view of this dearth of guidance it is not surprising that use of diversion to social work appears so inconsistent across Scotland.
- Moreover, there have been a number of competing initiatives introduced in recent years aimed at low level offending behaviour and how it is dealt with by the CJS that may have impacted on the use of diversion to social work.

Diversion policy and practice in Procurator Fiscal Offices

- There is no over-arching policy regime in this area and the extent and use of diversion by Fiscals is primarily determined at the local level.
- Diversion to social work is regarded by Procurators Fiscal as a useful and desirable alternative to prosecution.
- The successful implementation and operation of diversion schemes depends most importantly on informal working relationships between individual Fiscal offices and Criminal Justice Social Work departments.
- Fiscals are ultimately constrained in their use of diversion by the existence and availability of schemes and/or places. However capacity was not noted as an issue in the study sites.

Audit of Schemes for Diversion from Prosecution to Social Work

- The model of diversion practice is broadly similar across the local authorities in the sample obtained, but there are some local examples of innovative practice to be noted.
- While there is some similarity in the nature of provision in different areas, there are also wide discrepancies, particularly in relation to the take up diversion schemes in the different local authorities.
- There is little systematic gathering of evidence regarding the effectiveness of the social work diversion schemes currently operating.
- However, there is scope within the current data gathering systems of local authorities to undertake a much broader study of diversion practice and address some of the outstanding questions and issues raised here.

Conclusion

- Patterns of provision and take up of diversion to social work are highly localised and predicated on good working relationships between local social work teams and Procurator Fiscal offices.
- To encourage increased use of diversion to social work it is argued that recent increases in availability of schemes in local areas must continue and that efforts must be made to encourage the development and fostering of reciprocal working relationships between local social work teams and Fiscal offices.

CONTENTS

1. INTRODUCTION	6
Methodology	7
2. REVIEW OF DATA AVAILABLE ON SCOTTISH GOVERNMENT WEBSITE	9
Number of diversion from prosecution cases commenced, 2001/02 to 2008/09	9
Diversion and the rate of recorded crime	10
Variation by CJA	11
The effect of Lothian and Borders	13
Variation in rates of diversion by CJA	14
Proportion of referrals taken on as cases and proportion of cases successfully completed.....	15
Diversion by age and gender	15
Comparing Scottish Government data with that held locally.....	17
Summary and conclusions	18
3. REVIEW OF POLICY RELATING TO DIVERSION FROM PROSECUTION TO SOCIAL WORK.....	20
Key national policy changes.....	20
Policy Documentation Relating Directly to the use of Diversion	21
Conclusion	23
4. DIVERSION POLICY AND PRACTICE IN PROCURATOR FISCAL OFFICES.....	24
Communication with Criminal Justice Social Work.....	24
COPFS Diversion Policies.....	26
The Decision Making Process.....	27
Communication with Police	29
Conclusion	29
5. AUDIT OF SCHEMES FOR DIVERSION FROM PROSECUTION TO SOCIAL WORK	31
Responses to the survey	31
Provision of 'schemes'	32
How long have the schemes been operating?	34
Scheme capacity	35
Client characteristics.....	35
Activities on the schemes	36
Aims and objectives	37
Measures of success	37
Data and information gathering	38
Conclusion	39
6. CONCLUSION	40
APPENDIX ONE: QUESTIONS FOR AUDIT OF DIVERSION FROM PROSECUTION TO SOCIAL WORK....	42
APPENDIX TWO: SCHEDULE FOR COPFS INTERVIEWS.....	44

1. INTRODUCTION

1.1 This report was commissioned by the Scottish Government (the SG) as a result of concerns raised by the diversion working group of the Pre-Disposal Programme Implementation Board. The numbers of cases diverted from prosecution have fallen in recent years (2006 onwards) and it was felt there was a need to investigate this issue further. To facilitate this, the SG requested that the Scottish Centre for Crime and Justice Research (the SCCJR) undertake a small-scale research study on the use of social work related diversion schemes by Procurators Fiscal in Scotland.

1.2 After discussions between the SG and the SCCJR it was agreed that, due to time and probable data constraints, the study should be treated primarily as a scoping exercise, to result in a written report covering the following topics:

- An outline of the type and nature of diversion schemes available, an overview of the number of offenders involved, and identification of trends over time.
- Identification of CJAs which appear to have different policies to others, and why this should be the case.
- The key issues relating to the schemes, utilising analysis of interviews with a small sample of stakeholders.
- Examination of what data relating to diversion is available via COPFS and other relevant agencies, how accessible it is and how it could be analysed.

1.3 The study was therefore conceived of as having three separate but related elements. An examination and assessment of available data was to be undertaken and key trends in the use of diversion reported; a map of available diversion schemes had to be provided; and finally, some qualitative research with key stakeholders to provide insight to issues arising around the provision, use and availability of diversion schemes.

1.4 It should be noted that this report refers only to diversion from prosecution to social work by Procurators Fiscal. It does not cover diversionary practice among either police or the courts.

Methodology

Examination of Available Data

Statistical data

1.5 The SCCJR team utilised publicly available statistical data to examine patterns in the use of diversion from prosecution to social work. The key data sources were the Scottish Government Criminal Justice Social Work statistics and Recorded Crime figures. Simple analyses were undertaken in Excel and the findings from this exercise are presented in Chapter Two of this report.

Policy documents

1.6 Because of the apparent variation and fluctuation in the use of diversion across Scotland a comprehensive review of policy at national and local level relating to diversion was undertaken. The research team conducted a number of internet searches (the search terms and dates are detailed in Chapter Three) and raised the issue in correspondence with the study participants. The findings are presented in Chapters Four and Five of this report.

Data Collection and Analysis

1.7 Based on the findings from the statistical analysis three Community Justice Authorities (CJAs) were identified as being of particular interest in terms of their patterns and rates of diversion. The CJAs selected were Lothian and Borders (high level of use of diversion), South West Scotland (fluctuating use of diversion) and Glasgow (low use of diversion). The research focussed on these areas and additional data was sought and acquired from these CJAs.

1.8 The research team also sought further data for analysis from the Crown Office and Procurator Fiscal Service (COPFS). The possibility of accessing COPFS data was discussed at meetings between the research team and individual Procurators Fiscal, with the team being informed that formal requests for data would have to be sent in writing to the Crown Office for consideration by Head of Policy. Given the length of time this process would have taken, and feedback from Procurators Fiscal that social work data would be the most reliable data for measuring the extent of the use of diversion, the research team elected not to pursue this particular course of action for this report but recommend it be undertaken in any future study of diversionary practices.

Map of available diversion schemes

1.9 To ascertain what social work related diversion schemes are currently in operation, the research team made contact with the Heads of Criminal Justice

Services and Youth Justice Co-ordinators within the three CJAs identified above.¹ Having made contact with the key individuals in each of the local authorities in the CJAs, a questionnaire was distributed electronically seeking information on the arrangements for provision of diversion in each area (see Appendix One for details). Open correspondence was also encouraged and local authorities made use of this opportunity to provide additional information to the research team. The questionnaire was piloted in Edinburgh and feedback from an experienced practitioner was offered on the clarity and relevance/ importance of content. To maximise returns follow up emails were sent. The limited time available has meant that some local authorities were unable to provide full questionnaire returns but all responded to the research team with at least some information on the availability of diversion schemes. The findings from this exercise are presented in Chapter Five of this report.

Qualitative interviews with Procurators Fiscal

1.10 The research team approached Procurators Fiscal within the three key CJAs for interview. Interviews were semi-structured (see Appendix Two for interview schedule) and designed to allow discussion around the key research questions and any emerging patterns from the data analysis. The findings from the analysis of the data gathered are discussed in Chapter Four of this report.

¹ It had initially been proposed to do this on a national level, but as the study got underway it became apparent that this was too large an undertaking for the limited time available.

2. REVIEW OF DATA AVAILABLE ON SCOTTISH GOVERNMENT WEBSITE

2.1 Statistics on the use of diversion across Scotland are freely available on the Scottish Government (SG) website. To set the scene for the rest of the report this chapter presents exploratory analysis of this data. It covers in the main *cases* of diversion into the criminal justice social work system, and also includes a comparison of these figures with police recorded crime statistics. The final section briefly compares the data held centrally by the SG and the numbers returned to the SCCJR by local CJSW as part of the audit of schemes for this report.

2.2 The main findings of this chapter are:

- Recent declines in the number of cases diverted probably do not yet constitute a genuine trend.
- Practice in a relatively small number of Community Justice Authorities (CJAs) (indeed, a relatively small number of Local Authorities) appears to be behind most of the recent decline in the use of diversion identified by SG.
- There is nothing to suggest at this stage that the reduction in cases diverted, such as it is, can be accounted for by either changes in the rate of recorded crime or Criminal Justice Social Work (CJSW) practice and success rates.

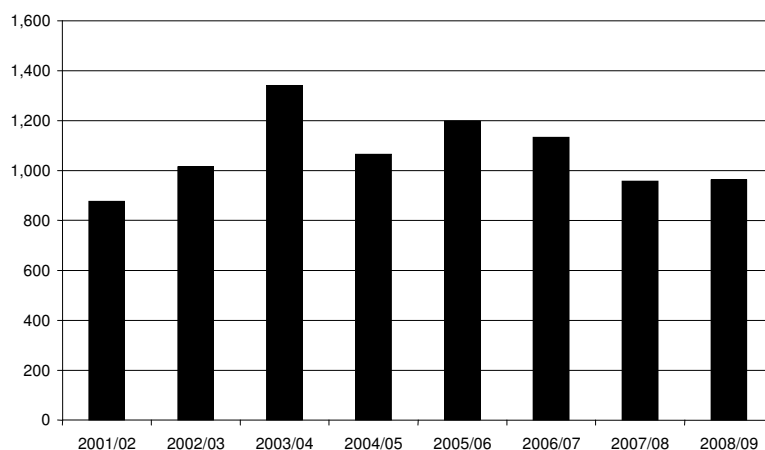
A note on data issues

2.3 The data available on the SG website, although stretching back to 2001/02, vary from year to year (in general, latter years have more detailed tables). The analysis below generally attempts to use the longest time scale possible, but for reasons of brevity this is usually left implicit in the presentation rather than presented formally in each case.

Number of diversion from prosecution cases commenced, 2001/02 to 2008/09

2.4 Although the SG have identified a decline in the number of cases in recent years as an issue of concern, a look at the longer term picture suggests this decline is probably not yet long-lived enough to constitute a trend. Figure 2.1 shows that since the turn of the century, the number of cases diverted has fluctuated significantly. Furthermore, the decline in cases 2005/06 to 2007/08 did not continue into 2008/09, when there were an almost identical number of diversions as in the previous year.

Figure 2.1 Diversion from Prosecution Cases Commenced, 2001/02 to 2008/09

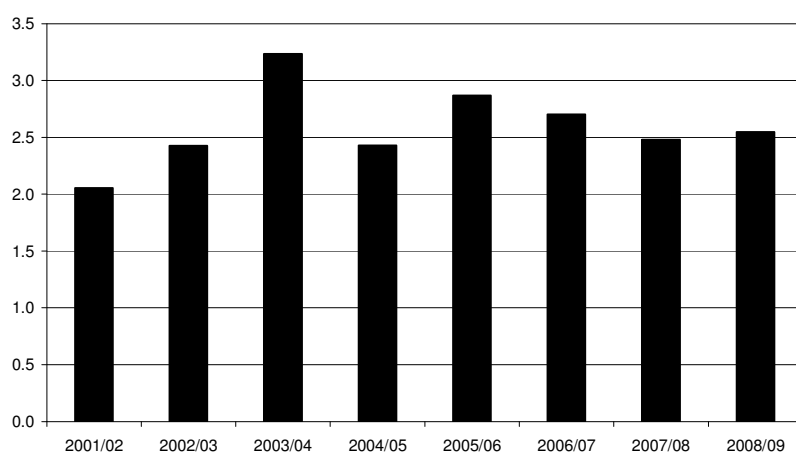


Source: Scottish Government Criminal Justice Social Work statistics

Diversion and the rate of recorded crime

2.5 Shifting the unit of analysis to the number of cases diverted per 1,000 crimes recorded, we find a pattern almost identical to that seen above (Figure 2.2). This similarity suggests that national-level variations in crime rates have had little impact on the number of cases being diverted (as shown in Figure 2.1). However there will be other structural constraints on Fiscals; the number of schemes and places available is likely to be a key factor affecting their decision-making. Furthermore, the overall recorded crime rate is a very blunt measure. If more detailed information on the types of crimes in which those who are diverted are involved was forthcoming this would enable a more robust denominator to be developed.

Figure 2.2 Diversion from Prosecution Cases Commenced per 1,000 crimes recorded by the police, 2001/02 to 2008/09

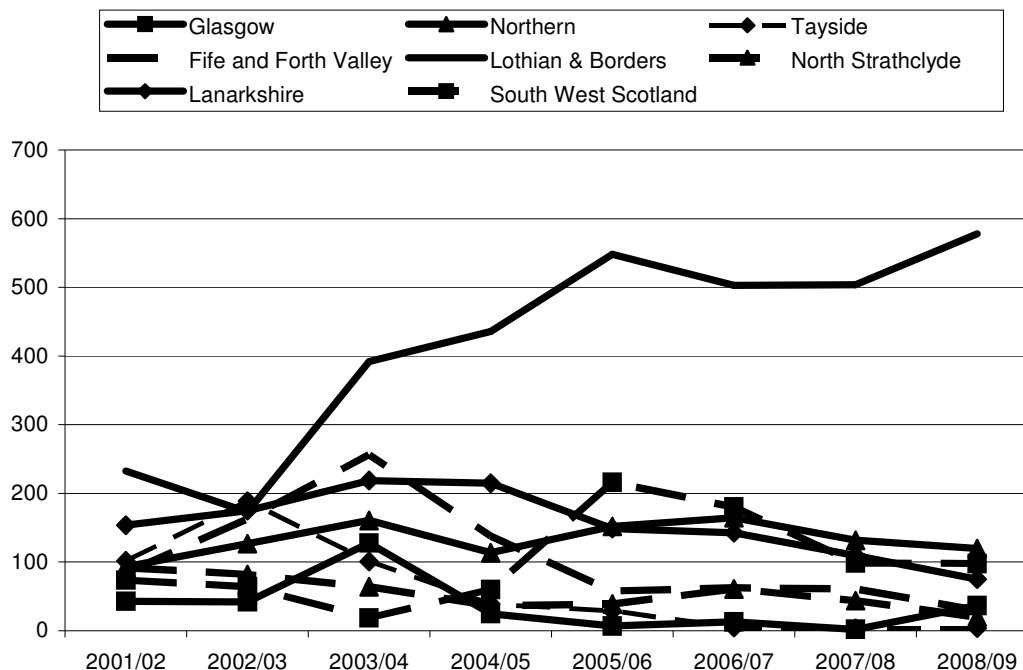


Source: Scottish Government Criminal Justice Social Work and Recorded Crime statistics

Variation by CJA

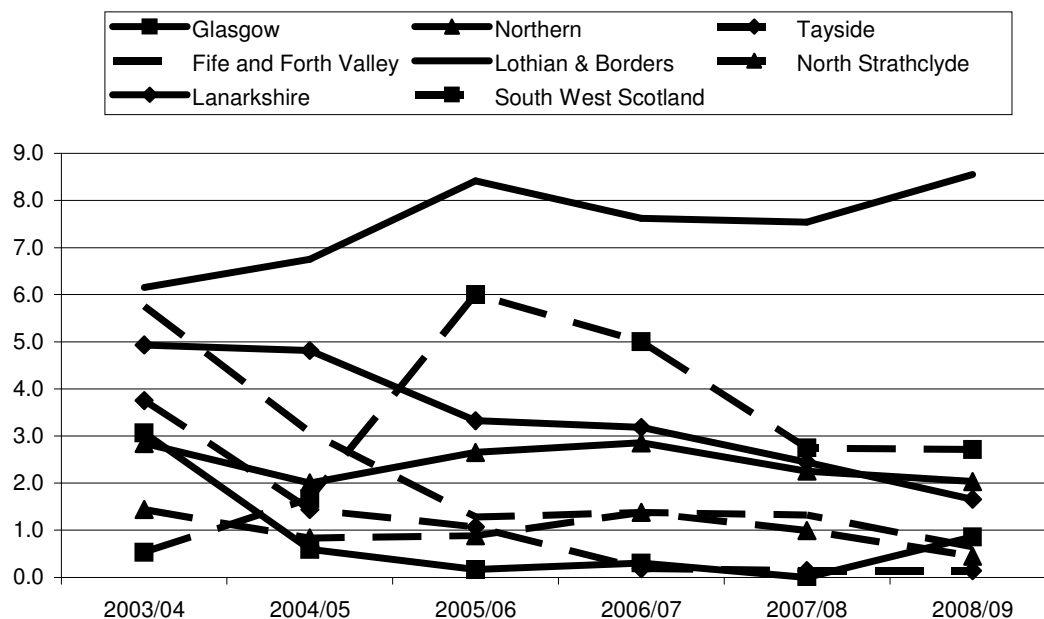
2.6 There are major variations in the number of cases diverted across different CJAs, with Lothian and Borders being by some margin the dominant force (see Figure 2.3). Some of this variation will be due to the relative sizes of the different authorities, but this cannot explain, for example, the massive variation between Lothian and Borders (578 cases diverted in 2008/09, mostly arising in Edinburgh itself) and Glasgow City (37 cases in 2008/09 and only 2 in 2007/08). Returns from Glasgow indicate that a diversion scheme started there in 2008, which should have an impact on figures in future years (there was apparently no diversion scheme in Glasgow prior to this – see Chapter Five). Note also that the number of diverted cases in Lothian and Borders increased between 2007/08 and 2008/09, while in most other regions it fell or remained flat.

Figure 2.3 Number of Diversion from Prosecution Cases Commenced: by CJA, 2001/02 to 2008/09



Source: Scottish Government Criminal Justice Social Work statistics

Figure 2.4 Diversion from Prosecution Cases Commenced per 10,000 of the population, by CJA, 2001/02 to 2008/09



Source: Scottish Government Criminal Justice Social Work and Recorded Crime statistics

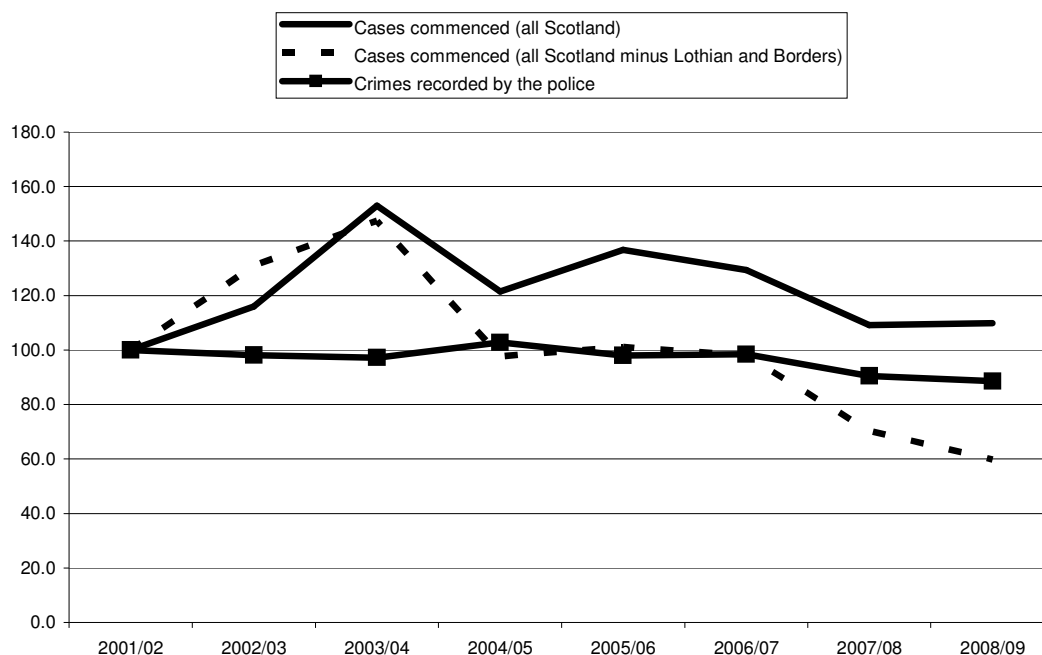
2.7 Of course, some of the variation shown in Figure 2.3 could be down to the different population sizes of the CJAs. Figure 2.4 takes this into account by showing the rate of diversion per 10,000 of population. In the event, the pattern is very similar: the rate of diversion in Lothian and Border consistently runs consistently ahead of that in other areas.

The effect of Lothian and Borders

2.8 The magnitude of the effect activity in Lothian and Borders has on the overall rate of diversion in Scotland is confirmed in the Figure 2.5. Indexed on 2001/02 the level of diversion across Scotland ran ahead the level of recorded crime right through to 2008/09. However if Lothian and Borders is taken out the equation (the dashed line) the level of diversion mirrored that of recorded crime from 2004/05 to 2006/07 before falling below it in 2007/08, with the gap widening into 2008/09. That is, the number of diversions in Scotland minus Lothian and Borders fell by comparatively more than the level of crime between 2006/07 and 2008/09. These data demonstrate the magnitude of the effect practice and activity in one area or CJA can have on the overall ‘Scotland-wide’ picture.

Figure 2.5 Diversion from Prosecution Cases Commenced and recorded crime statistics, 2001/02 to 2008/09

Indexed on 2001/02 levels

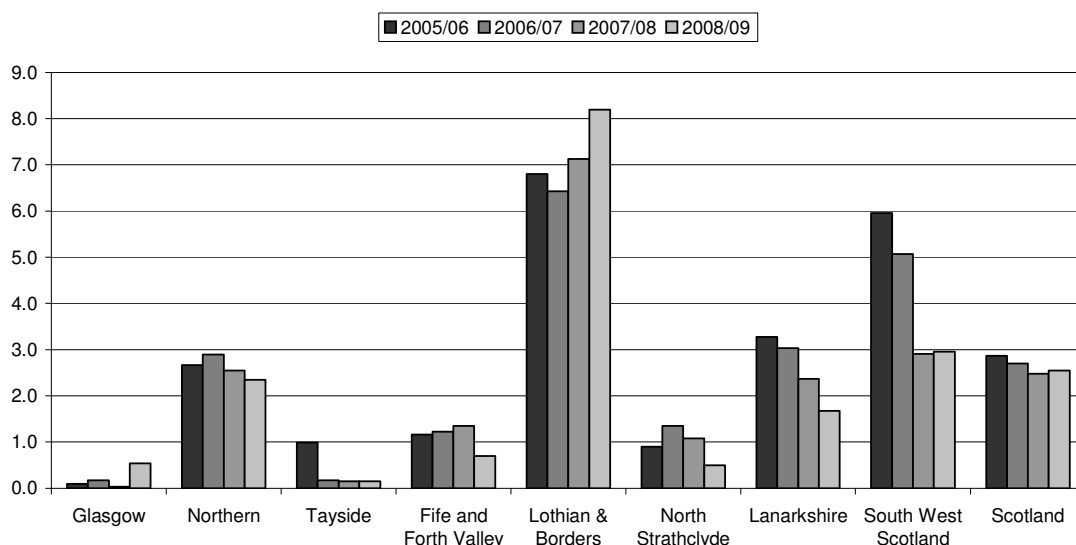


Source: Scottish Government Criminal Justice Social Work and Recorded Crime statistics

Variation in rates of diversion by CJA

2.9 Again, the different characteristics of the CJAs need to be taken into account. For example, differences in crime rates and offence patterns might affect the picture at the local level. Shifting the analysis to the rate of diversion per 1,000 recorded crimes in each CJA, Figure 2.6 reveals that over the four most recent years for which data are available there was a decline in the rate of diversion cases commenced in a number of authorities. Most important of these by some margin was South West Scotland, where the rate of diversion more than halved between 2005/06 and 2007/08 (although it was unchanged into 2008/09). Indeed, change in just three authorities (South West Scotland, Lanarkshire and Tayside) accounted for over 75 per cent of the overall decline in the number of diversions between 2005/06 and 2007/08, and this cannot be accounted for by changes in the level of recorded crime in these areas. Further investigation suggests that almost all this effect came from Dumfries and Galloway, where the number of diversion cases went from 0 in 2003/04 to 191 in 2005/06 before falling back to 60 in 2007/08 (rising to 84 in 2008/09). The rapid jump, in particular, is likely due to the establishment of a new scheme in Dumfries and Galloway in 2005 (see Section 7 below).

Figure 2.6 Diversion from Prosecution Cases Commenced by CJA per 1,000 recorded crimes, 2005/06 to 2008/09

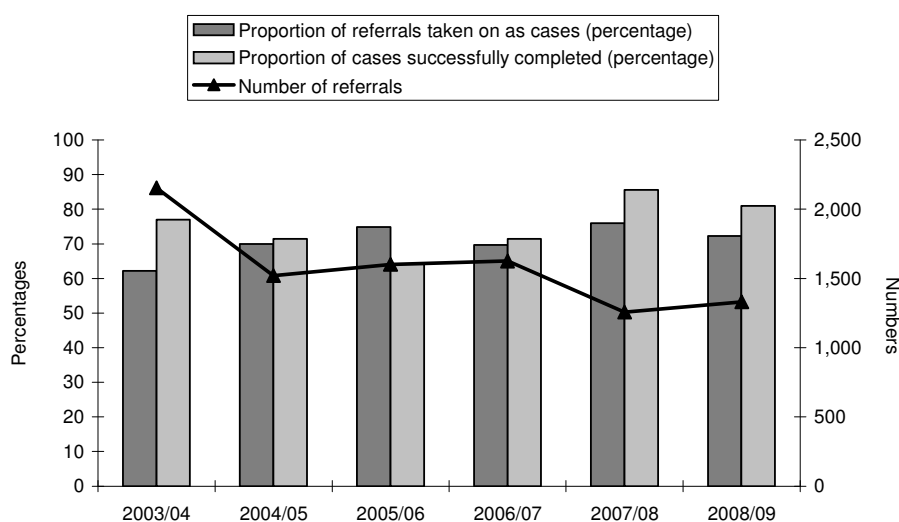


Source: Scottish Government Criminal Justice Social Work statistics

Proportion of referrals taken on as cases and proportion of cases successfully completed

2.10 Just as change in the volume of recorded crime does not seem to have been behind the recent fall in the number of cases diverted, reductions in the proportion of referrals taken on and cases successfully completed also do not appear, at the aggregate level, to be behind the decline. Both proportions rose between 2003/04 and 2007/08 (see Figure 2.7), although they fell back slightly in 2008/09. This makes it unlikely, on the face of it, that Fiscal's offices have reacted to changes in CJSW practise or success rates by referring fewer cases for diversion.

Figure 2.7 Referrals, number of cases and successful completions, 2003/04 to 2008/09



1. Figures for 2006-07 include some cases commenced which were a result of referrals from the previous year.

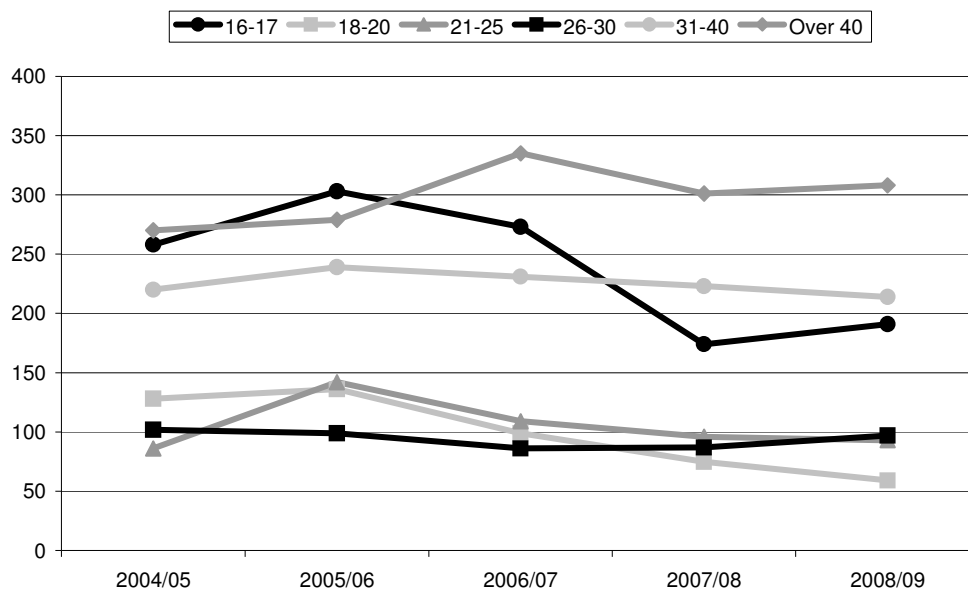
2. Figures for 2006-07 exclude figures for Highland as these cases were not recorded.

Source: Scottish Government Criminal Justice Social Work statistics

Diversion by age and gender

2.11 Since 2004/05 (the earliest year for which comparable data are available), the number of cases diverted involving defendants of different age groups has been relatively stable year on year (Figure 2.8). There is one important exception to this: the number of diverted cases involving 16-17 year olds fell from 303 in 2005/06 to 191 in 2008/09 (with a low at 174 in 2007/08). This mirrors the overall decline shown in Figure 2.1 above, and suggests that the recent decline in cases diverted may have been due to change in a specific scheme(s) or in practice relating to this particular client group.

Figure 2.8 Number of cases diverted: by age and year, 2004/05 to 2008/09



Source: Scottish Government Criminal Justice Social Work statistics

2.12 This point can be specified further. Examination of available data for specific Local Authorities demonstrated that almost all the 2005/06-2007/08 drop can be accounted for by change in Dumfries and Galloway. In this one authority the number of cases involving 16-17 year olds that were diverted fell from 191 in 2005/06 to 60 in 2007/08, before rising again to 84 in 2008/09. Most of this change reflects variation in cases involving young men, who make up the bulk of the 16-17 age group involved in diversion schemes in this region. These data demonstrate that events in a particular area, perhaps in this case the ‘bedding down’ of a new diversion scheme for young people which was introduced in Dumfries and Galloway in 2005, can have a significant impact on the general picture across the whole of Scotland.

2.13 Table 2.9 completes the story by showing the age/gender split in cases diverted for the years 2006/07 to 2008/09. Within a generally similar pattern perhaps the key message is that diversion appears to be used relatively more in cases involving older women than for cases involving older men. For example, in 2008/09 49 per cent of ‘male’ cases diverted involved men over 30 – for the ‘female’ cases this proportion was 60 per cent. It is also noteworthy that the proportion of cases involving women is far higher than the proportion of women offenders overall. Over half of cases diverted in 2008/09 involved female defendants, far more than

might be expected given the extent of women's involvement in crime compared with men (see also Chapter Four).²

Table 2.9 Diversions to prosecution: by gender and age, 2006/07

	Percentages		
	2006/07	2007/08	2008/09
Male			
16-17 ¹	34	25	28
18-20	11	9	7
21-25	8	8	8
26-30	5	8	8
31-40	14	19	19
Over 40	27	30	30
Total (numbers)	605	451	472
Female			
16-17 ¹	12	12	12
18-20	6	7	5
21-25	11	12	11
26-30	10	10	12
31-40	27	27	26
Over 40	33	33	34
Total (numbers)	528	505	490

1. Includes a small number of reports relating to clients aged under 16 years.

Source: Scottish Government Criminal Justice Social Work statistics

Comparing Scottish Government data with that held locally

2.14 As part of the audit of existing diversion schemes, which comprises Chapter Five of this report, local CJSW managers were asked to provide data for the schemes running in their area. Although in the event few did so, it is still instructive to compare the numbers provided with those held centrally and available on the SG website.

2.15 Table 2.10 shows that there are some discrepancies between the data held centrally by the SG and that held at the local level in both Edinburgh and Dumfries and Galloway. It seems likely these will be due to small errors, inconsistencies in time periods and so forth, rather than systematic mis-reporting and/or mis-recording. However if repeated across the whole country such small discrepancies could add up to a relatively large number and represent a significant bias in the data available to the SG to track the use of diversion across Scotland (or compare local areas). While there are not enough data available at the present time to draw any firm conclusions on this issue, the evidence presented in Table 2.10 suggests that an

² Heidensohn, F and Gelsthorpe, L. (2007) 'Gender and Crime', pp 381-420 in Maguire, M., Morgan, R. and Reiner, R. (eds) *The Oxford Handbook of Criminology (Fourth edition)*. Oxford: Oxford University Press.

audit of how these data are collated and reported to SG may be in order, if only to rule out such a possibility.

Table 2.10 Diversion from prosecution cases commenced by Community Justice Authority and Local Authority, 2004/05 to 2008/09

	2005/06	2006/07 ¹	2007/08	2008/09	Numbers 2009/10
Scottish Government wesbite					
Glasgow City ²	7	13	2	37	.
Edinburgh, City of ³	366	313	346	389	.
Dumfries & Galloway	191	161	60	84	.
Returns from local CSJW					
Glasgow City	109
Edinburgh, City of ³	366	313	358	.	240 ⁴
Dumfries & Galloway	.	.	70	71	65

1. Figures for 2006-07 include some cases commenced which were a result of referrals from the previous year.

2. Since July 2008, Glasgow has been running a new diversion scheme which will have an impact upon the number of cases.

3. There is no sheriff court in Midlothian, who buy into Edinburgh for this service.

4. Date for March 2010 not available.

Source: Scottish Government Criminal Justice Social Work statistics and local returns to SCCJR

2.16 Finally, note the rapid increase in cases diverted in Glasgow in 2009/10 compared with earlier years, something which bears out suggestions that the new scheme in operation there will boost the overall numbers. Indeed, other returns from Glasgow suggest there is considerably more potential for diversion there than even a threefold increased from 2008/09 to 2009/10 might suggest. A total of 723 referrals were made by Glasgow Fiscals over the year, of which 202 were assessed and 109 orders made. All other things being equal, the establishment of this new scheme in Glasgow may drive up the Scotland-wide number of diversions in 2009/10.

Summary and conclusions

2.17 The data presented here suggest four main findings. First, while there was an absolute (in terms of numbers) and relative (in terms of the rate of diversion per 1,000 crimes) decline in the number of cases diverted between 2005/06 and 2007/08, this did not continue into 2008/09 and, viewed in the longer term, does not appear to be a particularly significant trend. Second, however, it is the use of diversion in Lothian and Borders which appears to be 'driving' this Scotland-wide picture – remove this CJA from the equation and the decline would be considerably greater in magnitude.

2.18 Third, and leading on from this last point, events in particular CJAs, such as the setting up, 'bedding in' or perhaps cessation of particular schemes can, because of the relatively small numbers involved, have a marked impact on the overall picture. This is particularly noticeable in the case of Dumfries and Galloway; Edinburgh; and, looking forward, Glasgow, where the new scheme has led to a rapid increase in the number of cases diverted. The key point here is that events in local areas can have quite dramatic effects on the Scotland-wide picture.

2.19 Finally, there is nothing to suggest in this data that the decline in diversion, such as it is, has been driven by changes in the proportion of cases put forward that are taken up by CJSW or in the rate of completion. It does not seem on this basis that any break down in either the relationship between Fiscals' offices and CJSW, or in the success of diversion (based on completion), is behind recent falls in the use of diversion. Issues around these relationships are taken up in more detail in Chapter Four.

3. REVIEW OF POLICY RELATING TO DIVERSION FROM PROSECUTION TO SOCIAL WORK

3.1 This policy review has two separate elements: an examination of recent changes to policies and practices that may have impacted on the pattern of use of diversion from prosecution to social work since 2006; and a review of publicly available policy documentation relating directly to the use of diversion.

3.2 In short, the discussion in this chapter shows that:

- There is a lack of publicly available information and guidance, at both national and local level, on the use of diversion from prosecution to social work.
- It is argued that in view of this dearth of guidance, it is not surprising that use of diversion to social work appears so inconsistent across Scotland.
- Moreover, there have been a number of competing initiatives introduced aimed at low level offending behaviour and the ways that this is dealt with by the CJS that may have impacted on the use of diversion to social work.

3.3 During March 2010 searches were conducted on the Scottish Government website and the websites of the three main CJAs involved in the study (Lothian and Borders, Glasgow and South West Scotland) and their individual local authorities. Google was also used to conduct searches.

Key national policy changes

3.4 The following national policy and practice changes were found documented on the Scottish Government website. These have been classified by the research team as having either possible direct or indirect influence over the use of diversion from prosecution to social work.

Direct Influence

- Introduction of 100 per cent funding for social work diversion schemes (2000)

Indirect Influence

- Fixed Penalty Notices (piloted from 2005, national roll out commenced 2007)
- Arrest Referrals (piloted from 2003, extended 2006)
- Summary Justice Reform (began in 2007)

3.5 The research team were not able to analyse the impact of these policy and practice changes but it is speculated that the introduction of 100 per cent funding for social work diversion schemes may have led to an increase in some areas of

Scotland in the availability of schemes and therefore an increase in the numbers diverted from prosecution (bearing in mind the issue of uptake of funding raised in Chapter Five of this report). However, criminal justice social work statistics are only available on the Scottish Government website back to the early 2000s and it has not been possible within the timeframe of this study to examine the appropriate figures to further this speculation.

3.6 It is also suggested that the policy and practice changes with a possible indirect influence may have had a negative impact on diversion figures. Fixed penalty notices and arrest referrals have provided the police in Scotland with the opportunity to deal with cases directly rather than reporting them to the Procurators Fiscal. This should reduce the numbers of cases reported to the Procurators Fiscal and possibly remove cases that would be considered for diversion from the system. Again, data that allows an examination of this topic has not been available and it is not possible to provide anything other than speculation on whether this has been the case.

3.7 The Summary Justice Reform is the most recent national level change to be implemented. This particular change was raised in a number of interviews and in correspondence with social work staff as having negatively affected the numbers of cases diverted to social work. Should further study be undertaken in this area, it is suggested that these possible patterns be explored in more depth.

Policy Documentation Relating Directly to the use of Diversion

Scottish Government

3.8 No specific policy or policy guidance documentation was found on the Scottish Government website relating directly to the use of diversion to social work.

Community Justice Authorities

3.9 The Lothian and Borders CJA website had a number of documents available, including annual reports and plans, but none specifically on the use of diversion. The Annual Report 2008-2009³ noted that the CJA would like to increase the use of diversion, but no mention was made of what diversion schemes were already available or how this increase was going to be achieved. The Action Plan 2010-11⁴ states that the CJA is aiming to make greater use of diversionary measures for less serious or first time offenders and that it aims to divert mentally disordered

³ <http://www.cjalb.co.uk/docs/LBCJAAnnualReport0809.pdf>

⁴ As at 29th April 2010 the link to the Action Plan 2010-11 was broken. See <http://www.cjalb.co.uk/news/63.html> for access to link

offenders away from custody, which is a separate area of diversion not examined in this report. The Area Plan for 2008-11⁵ states the same and highlights that SACRO are running a restorative justice diversion scheme in Edinburgh and Midlothian but not that there is a diversion service run in each of the local authorities.

3.10 Similar documents were available on the Glasgow CJA website. The Area Plan 2008-2011⁶ makes no mention of diversion other than to state that those on diversion schemes (and community service orders and first time offenders) are likely to be 'close' to the labour market i.e. capable of finding work with the right support and training. The Annual Report 2007-2008⁷ makes no mention of diversion at all, which is surprising in view of the launch of the Glasgow City Council's diversion service in July of that year.

3.11 Looking to the same documents on the South West Scotland CJA website, the Annual Report 2008-09⁸ only mentions diversion in terms of arrest referral and court based diversion for mentally disordered offenders. The Annual Report 2007-08⁹ makes no mention of diversion. However the Area Plan 2008-11¹⁰ mentions diversion several times, including: a supporting statement from Strathclyde Police (a partner agency of the CJA); a commitment to reducing reoffending by less serious and first time offenders via early actions by the police, PF and local authorities and a highlighting that diversion from prosecution is already provided for this group; a commitment to the development of mental health based court based diversion (again not an area of diversion considered in this study); and a statement that 89 per cent of diversion cases in an unspecified time period were young offenders. Given the nature of the available social work diversion scheme this is not a surprising statement. The Area Plan 2008-11 also notes that 21 per cent of diversion cases were for female offenders and outlines a similar commitment to diversion for less serious and first time offenders in order to prevent escalation into the CJS but no further detail is offered.

Local Authorities

3.12 Using Google (15th March 2010) searches for 'diversion prosecution social work' were undertaken, with each search limited in turn by the name of the local authority.

⁵ <http://www.cjalb.co.uk/docs/LothianBordersCJAAreaPlan2008.pdf>

⁶ <http://www.glasgowcja.org.uk/NR/rdonlyres/E8D371B3-AED1-477D-9208-DC9D7E9C796A/0/GCJAAreaPlan200811.pdf>

⁷ <http://www.glasgowcja.org.uk/NR/rdonlyres/3AECAF91-0311-4A38-B433-3F51710261E6/0/GCJAAAnnualReport200708.pdf>

⁸ See <http://www.swscja.org.uk/annual-report-2008-09-published.html> for link to document

⁹ See <http://www.swscja.org.uk/annual-report-2007-08-published.html> for link to document

¹⁰ See <http://www.swscja.org.uk/> for link to document

3.13 Nothing of relevance was found in any of the searches, except in the Dumfries and Galloway search where a report about the youth scheme was found. However, the information in this merely replicated the information the team had already received from youth justice social work.

Conclusion

3.14 The lack of publicly available information and guidance on the use of diversion from prosecution to social work appears largely reflective of the arrangements in place for the operation of current schemes and practice. The findings from the interviews and the questionnaire responses discussed in the following chapters of this report suggest that diversion operates (or not) very much on the basis of largely informal arrangements between individual Procurators Fiscal offices and local criminal or youth justice social work teams. There is no national or CJA level driving policy behind its use and, where public guidance is offered (for example in Dumfries and Galloway) it is patchy rather than comprehensive. Therefore it is not surprising that use of diversion to social work appears so inconsistent across Scotland.

3.15 Moreover, there are a number of competing initiatives, aimed at low level offending behaviour and how it is dealt with by the criminal justice system, that have been introduced in recent years that may or may not be impacting on the use of diversion to social work. Further analysis of this, as well as a consideration of historical patterns of diversion, must be considered before a firm conclusion on this can be reached.

4. DIVERSION POLICY AND PRACTICE IN PROCURATOR FISCAL OFFICES

4.1 Interviews were conducted with senior Procurators Fiscal in Edinburgh, Dumfries and Galloway, and Glasgow East: all three had oversight of diversion to Criminal Justice Social Work (CJSW) and other agencies (where applicable) in their areas. Each interview followed a standard script and the findings are summarised below.

4.2 To anticipate the discussion three main themes emerged from the interviews:

- The informality of the process. While structured policies and processes do exist, the personal relationships between Fiscals, CJSW, and others involved in the process appear to be more important. This includes the ways in which Fiscals judge the success of the schemes. Although formal feedback mechanisms do exist, general feeling about usefulness and efficacy again seem to be more important. This informality extends to the setting up of specific schemes by local partnerships.
- Decisions to divert are made on a case-by-case basis. Although some types of cases and, more so, types of defendants might be 'prioritised' for diversion, all three respondents stressed that the decision is, and must be, based on the details of the specific case. This point underscores the apparent informality of the process. Case marking guidelines and specific policies were mentioned primarily in the context of the types of cases that are *precluded* from diversion. There was no suggestion that *directions to divert* are ever made (although the use of diversion in general is encouraged).
- Despite the informality there are structural constraints affecting the process as Fiscals can only divert to existing schemes. While capacity does not appear to be an issue, and bearing in mind the case-by-case decision making process, it seems that to increase the use of diversion significantly, if this is desired, extra capacity would be a necessary prerequisite.

Communication with Criminal Justice Social Work

Number of schemes in operation

4.3 In Glasgow and Edinburgh there is essentially just one formal scheme in operation. In both cases the schemes are jointly managed with Criminal Justice Social Work (CJSW). In Glasgow the diversion scheme has only relatively recently been set up, and the whole process had been a joint endeavour between the Fiscal

office and CJSW. Both schemes cater for all types of defendant (although there are obvious emphases on particular groups – see below). The Edinburgh office also has links with SACRO and its restorative justice scheme, and ‘Another Way’, a programme which works with women in prostitution due to drug and alcohol problems. However the only route to social work based diversion is via the formal link the office retains with the local CJSW team.

4.4 By contrast three schemes are in operation in Dumfries and Galloway. Two – the National Driver Improvement Scheme and Stewartry Young Drivers Scheme – aim to deal with particular local problems with traffic offences in the area; namely, a generally high level of careless driving and a particular ‘boy-racer’ problem. The third scheme is a Youth Justice Diversion scheme to 16 and 17 year olds. The Dumfries and Galloway respondent estimated that around one third of all cases involving this age group are sent to this latter scheme. The situation in Dumfries underlines that entire schemes can be set up in local areas to deal with specific issues, however these are identified, which do not appear to be directly related to any particular national level policy or programme.

Scheme availability and capacity

4.5 The respondents all stressed the informality of the process and the importance (and existence) of a good working relationship with CJSW/YJSW or the scheme operators. Formal meetings take place in Edinburgh (monthly) and Glasgow (quarterly). More informal visits and meetings also occur, with a particular emphasis on this in Dumfries. In general, capacity did not seem to be an issue, with few if any complaints raised.

Mechanisms for feedback about individuals diverted to schemes or projects?

4.6 Informality was again a key point here. Although formal reports are issued (with this seeming to be particularly important in Glasgow), and feedback occurs at the regular meetings where these occur, the role of informal contact seems to be as important. In the smaller Dumfries office some direct ‘feedback’ can also be obtained as staff will recognise if a previously diverted individual features in future cases. It was generally felt though that those who had been diverted did not come back.

The effectiveness of the schemes

4.7 Overall opinions of the schemes were very high. All three Fiscals considered them to be an effective and useful tool.

4.8 In Edinburgh the scheme was described as “astonishingly good”, and “this little bit is one of the most satisfying aspects of my work”. The view was that

diversion takes out of court a “large proportion” of people who do not need to be there. In Glasgow, “diversion is a good thing and we should be diverting”.

How are views about the effectiveness of the schemes formed?

4.9 A general level of informality and ‘feeling’ was yet again evident here, although there are the formal mechanisms of written reports. These related the ‘performance’ of the defendant on the scheme, and in Glasgow are used, on the basis of reported suitability and attendance, to make the decision on whether to prosecute or not. But the personal experience of the Fiscals and the links with CJSW and the scheme managers seem to be just as important in influencing views about the effectiveness of the schemes.

Variability across schemes?

4.10 No issues concerning variability (for example in effectiveness) across schemes were raised because only one social work scheme is available in each locality. The drivers schemes in Dumfries were considered quite separately and were not compared in any way during the interview.

COPFS Diversion Policies

Policies relating to the use of diversion to social work related schemes

4.11 No national policies were identified by the interviewees.¹¹ Each locality had its own internal policy relating to the use of diversion to social work, although these are in governed in large part by case marking guidelines which are themselves partially nationally defined. Again informality was a key point; beyond the case marking guidelines Deputes are encouraged to use diversion when and where possible, but the decision is always on a case-by-case basis.

4.12 More formal internal policy documents, drawn up jointly with CJSW, are in existence in Glasgow and Dumfries and Galloway. These provide for the structure of the process, timescales and so forth. However in both areas, again, the importance of case-by-case decision making was stressed.

The pattern of diversion to social work related schemes and projects

4.13 Two key themes emerged under this topic. The first was local specificities and exigencies in relation to the numbers of people being diverted. In Edinburgh, for example, the nature of the process means that cases sent to diversion will vary

¹¹ This appears consistent with a lack of formal written policy and guidance relating to the use of diversion more generally. The research team attempted to undertake a review of diversion policies at a national and local level in Scotland and found very little by way of explicit documentation on the issue. See Chapter Three for the strategy applied and the findings of this exercise.

month to month, and the interviewee did not identify any particular trend over time. The presence and availability of Fiscal staff (particularly new staff), the types of cases arising, scheme capacity and length of time 'in service' were mentioned as issues in Edinburgh and elsewhere. A certain amount of 'prodding' of markers, to remind them of the existence and usefulness of the schemes, was also apparent.

4.14 The second theme was the types of people and cases being diverted. In Edinburgh and particularly Dumfries there is an emphasis on particular groups of people: 16-17 year olds in Dumfries; young people, women, people with mental health problems in Edinburgh; much the same 'target groups' in Glasgow. However in Glasgow there was a greater emphasis on the type of crime being committed. The interviewee noted that diversion is much higher in Glasgow East than elsewhere in the city, and put this down to the crime mix in the area: more domestic and neighbour disputes and, in general, a high level of people committing crime in their own area (compared with, for example, Glasgow Central, to which people travel in order to commit acquisitive crimes which may be less suitable for diversion).

The Decision Making Process

What influences or informs the decision to divert to social work?

4.15 There are two key influences on the decision to put a case forward for diversion: the characteristics of the offender and the nature of the offence. With the proviso that certain cases and/or offences are absolutely (i.e. legally) or effectively precluded from diversion, different interviewees place different emphases on these two, although all also stressed both are important.

4.16 The defendant's personal characteristics (see above) and history of offending behaviour were both mentioned as key influences: for example their vulnerability; whether they care for others; whether they are other suggestions diversion might or might not work; or whether they appear to be 'popping up' into view, for example by committing an offence where they previously had a more or less clean record.

4.17 In terms of the nature of the offence, all the interviewees agreed this could never be ignored. Indeed, the nature, gravity and impact of the offence were key factors in the decision making process. But the offence side of the equation could also throw up new issues and the potential for change. For example Glasgow outlined an incipient process through which a new class of cases (Benefits Agency fraud) are coming to be considered as a possibility for diversion, even though this has hitherto not been the case. Use of diversion to keep 'ridiculous' cases out of court was also mentioned.

4.18 Other factors were mentioned, for example the impact on the victim, but the respondents largely placed these under the influence of either offence or offender characteristics.

4.19 Ultimately, Fiscals' discretion was again the key issue. There appears to be an implicit 'sliding scale' (in the words of one respondent) against which offences and defendants are assessed. Too high a 'score' and diversion will not be considered. As mentioned above there are of course also institutional (marking guidelines) and legal factors which constrain Fiscals in various ways and which rule out diversion in some cases.

Has the decision making process changed in recent years?

4.20 The general consensus was no, aside from new crime categories and types entering the equation, some of which (such as racially motivated crime) are precluded from diversion.

Are Fiscals satisfied with the current rate of diversion?

4.21 The interviewees were either satisfied with the current rate (2 sites) or would like an increase (1 site). To qualify this, for there to be a really significant increase it seems that the schemes available will need increased, or numbers expanded: Fiscals can only divert to extant schemes. However, since decision making is on a case-by-case basis it was recognised that an absolute increase may not be desirable, since the whole process is driven by the type and nature of the cases being marked.

4.22 Nevertheless, it was highlighted in Dumfries and Galloway that diversion from prosecution into social work was not available for alleged offenders over the age of 18. It was clear that this was an option that the Fiscal office would like to have available. Moreover, in Edinburgh it was felt that the current social work scheme (see Chapter 5 for more detail) was running at capacity and would not be able to cope with an increase in referrals.

What might encourage increased use of diversion to social work?

4.23 Answers under this section generally referred back to the points raised above. Fiscals can only divert to existing schemes so capacity would need to be enhanced if diversion to social work was to be increased in any substantive way. But on the other hand, the case-driven decision making process would seem to preclude the idea that large scale increases were necessarily desirable.

Communication with Police

Do local police forces operate any diversion schemes or policies?

4.24 The general answer here was no, respondents were not aware of any specific schemes, although all were aware of broadly similar activities local police undertake (for example the police violence reduction unit in Glasgow). There was also awareness of other CJS activity (for example the drugs court in Glasgow and the use of fixed penalty notices).

Do police activities have any impact on Fiscals' decision making?

4.25 No such impact was mentioned by any respondent

Is there correspondence between Fiscals and police about diversion?

4.26 While formal correspondence was more or less precluded by the respondents, it was clear that informal communication does take place. Both Edinburgh and Dumfries mentioned encouraging police to use the 'comments' box on the report forms to comment on salient factors in the case, including circumstances surrounding the individual and the offence, and whether in their opinion it may be suitable for diversion.

Conclusion

4.27 To sum up, what emerged most strongly from the interviews was that diversion was a popular tool among the individuals interviewed and, by extension, the offices in which they worked. All found the schemes in operation to be useful and effective, and felt that use of diversion was a fulfilling aspect of their jobs. The existence of close working relationships with local CJSW and other agencies also shone through. These relationships, and the apparent relative informality of the process, seemed to mean that diversion fitted naturally and practically into normal working life.

4.28 Two more key findings emerged from the interviews. All interviewees stressed the case-by-case nature of their decision-making processes, and the fact that they could only divert to and via the existing schemes. The decision to divert a case is therefore limited by structure (the existence or not of a suitable scheme and capacity of existing schemes) and exigency (the precise details of the case involved). On this basis it appears that, should the SG wish to increase the use of diversion it would need to at least encourage the setting up of new schemes in local areas. But although this would be a necessary condition it would not be sufficient to increase the use of diversion which, as far as our interviewees were concerned, will always be driven in the last instance by the nature of the cases before them. Similarly,

although some legal restrictions on the use of diversion were mentioned (for example in hate crime cases) specific issues of law did not loom large in the interviews. Above all it was the discretion of the Fiscal and the facts of the case before them that determined the action taken.

5. AUDIT OF SCHEMES FOR DIVERSION FROM PROSECUTION TO SOCIAL WORK

5.1 An audit of available social work led diversion schemes in the 3 key CJAs was undertaken. A questionnaire was distributed to the Head of Criminal Justice Services and the Youth Justice Co-ordinator in each of the local authorities within the CJAs, and returns were collated and analysed by the research team.

5.2 The findings discussed in this chapter demonstrate that:

- The model of diversion practice is broadly similar across the local authorities in this sample but there are some local examples of innovative practice to be noted.
- While similarity in the nature of provision exists, there are also wide discrepancies, particularly in relation to the take up diversion schemes in the different local authorities.
- There is little systematic gathering of evidence of effectiveness of the social work diversion schemes currently operating.
- However, there is scope within the current data gathering systems within the local authorities to undertake a much broader study of diversion practice and address some of the outstanding questions and issues raised here.

Responses to the survey

5.3 All local authorities provided a response to the questionnaire request. In some areas, criminal and youth justice social work replied separately, but in others joint returns were received, with one department often speaking on behalf of both. Table 1 illustrates the pattern of returns:

Table 1: Patterns of Return by Local Authority

CJA	Local Authority	Response Received from CJSW or YJSW?
Lothian and Borders	Edinburgh	CJSW
	Midlothian	CJSW
	East Lothian	Both
	West Lothian	Both
	Scottish Borders	Both
Glasgow	Glasgow	CJSW
South West Scotland	Dumfries and Galloway	YJSW
	East Ayrshire	CJSW
	North Ayrshire	CJSW
	South Ayrshire	CJSW

5.4 Notably, when a response was received from one department of a local authority, it was usually made clear that the other was not running a separate diversion scheme. Crucially, the role of youth justice in local authorities seems to vary, as some youth justice departments deal exclusively with young people under the age of 16 (for example the Scottish Borders) and others deal with 16 and 17 year olds as well (for example Dumfries & Galloway and West Lothian). As those under 16 committing minor offences of the type likely to be considered for diversion from prosecution are reported to the Scottish Children’s Reporter rather than the Procurator Fiscal, or indeed dealt with directly by the police, a number of youth justice departments were precluded from participating in this study.

Provision of ‘schemes’

5.5 All the local authorities in the study were providing some form of social work diversion scheme. The nature of the schemes was broadly similar across the local authorities, although it was noted that not all local authorities referred to their arrangements for diversion as a ‘scheme’. Although the reasons for this were not sought in the course of the study it is speculated that this is because attributing the title of ‘scheme’ implies that there is structured work provided specifically for divertees. In practice this is often not the case, as the rest of this chapter will

demonstrate. Table 2 illustrates the nature of the provision of diversion arrangements amongst the study sample.

Table 2: Nature of Provision of Diversion Arrangements

Local Authority	Scheme Provided By	Name of Scheme
Edinburgh	CJSW	Edinburgh and Midlothian Diversion Scheme
Midlothian	CJSW	Edinburgh and Midlothian Diversion Scheme
East Lothian	CJSW	East Lothian Diversion Scheme
West Lothian	CJSW/ YJSW	Prosecution Diversion Service
Scottish Borders	CJSW	Scottish Borders Criminal Justice Social Work Diversion Scheme
Glasgow	CJSW	Glasgow City Council Social Work Diversion from Prosecution
Dumfries and Galloway	YJSW	Dumfries and Galloway Youth Justice Diversion from Prosecution Scheme
East Ayrshire	CJSW	Untitled as not regarded as stand alone scheme
North Ayrshire	CJSW	Untitled as not regarded as stand alone scheme
South Ayrshire	CJSW	Title not given

5.6 As Table 2 shows the majority of diversion schemes are provided by criminal justice social work, with the exception of Dumfries and Galloway. As a youth justice funded scheme cannot provide for those aged 18 years and above, this means that this particular scheme is focused on individuals aged between 15½ - 17 years. West Lothian has a joint arrangement whereby criminal justice social work provide the overall scheme but cases involving 16 and 17 year olds are sent to the Youth Justice Family Support Team, who work in such instances under the same arrangements as the criminal justice social work scheme. Also of note is that Edinburgh and Midlothian run a joint diversion scheme covering both local authority areas. The scheme is based in Edinburgh, with around 10 per cent of its referrals coming from the Midlothian area.

How long have the schemes been operating?

5.7 The length of time that schemes had been operating varied considerably. In the Lothian and Borders CJA, arrangements for the provision of social work based alternatives to prosecution had been in place since the 1980s (with the exception of the Scottish Borders scheme which commenced in 1992). In Edinburgh and Midlothian it was stated that arrangements had been put into place following the publication of the Stewart Committee report in 1983 and that the scheme began running in 1985. Here and in West Lothian it was reported that schemes had experienced very little turnover in terms of key staff during their lifetime and as a result a continuity of service had been successfully maintained. Nevertheless, key changes in recent months were highlighted, such as the replacement of retiring qualified staff with unqualified workers, and noted as areas of concern for the remaining staff, particularly in relation to continued quality of service and the potential impact on its effectiveness as perceived by local Procurators Fiscal.

5.8 On the other hand, in Glasgow and South West Scotland arrangements for diversion were apparently in relative infancy. The earliest available scheme (the Dumfries and Galloway Youth Justice Diversion from Prosecution Scheme) commenced in 2005, while the Glasgow scheme (Glasgow City Council Social Work Diversion from Prosecution) only began operating in July 2008. In the time period immediately prior to these dates it appeared from the responses received that there were no diversion arrangements in place, although a more thorough investigation may reveal historical schemes and/or practices.

5.9 However, during the face-to-face piloting of the questionnaire in Edinburgh¹² the respondent reported that when the arrangements for 100 per cent Scottish Executive funding for diversion schemes had come into operation in 2000, a number of local authorities had been reluctant to apply, suggesting that arrangements may not have been in place. Lack of take up was attributed to a number of reasons; including a fear that diversion from prosecution was regarded as a 'soft option' due to media attention at the time. Thus a number of local authorities in Scotland are likely *not* to have the resources to provide a dedicated diversion service. Further investigation would be required to determine the extent to which this was true. Nevertheless, the availability of schemes, or rather the apparent lack of availability prior to 2005, would be expected to impact on the numbers of cases diverted over time. This finding suggests that taking a longer retrospective examination of diversion rates, for example looking back over ten years rather than three, may be a

¹² This area was selected as the pilot site due to its proximity to the research team base at the University of Edinburgh and the high numbers of cases diverted in the local area.

sensible approach to take in order to better establish what the patterns of use of diversion to social work from prosecution in Scotland have been.

Scheme capacity

5.10 The capacity of the available schemes was questioned as it was thought that this (particularly if maximum capacity were low) may be impacting on the numbers of cases that could be diverted. Interestingly, of the five schemes on which full questionnaire returns were available, only two specified a maximum capacity. Edinburgh and Midlothian reported being able to manage 30-40 cases per month, with the possibility of absorbing 50 if they were able to defer a proportion of cases until the following month¹³, allowing a yearly caseload of approximately 480. In West Lothian it was reported that the scheme can cope with up to 120 cases per year. In terms of assessing capacity and therefore potential for increased use of diversion, future study in this area would have to clarify why no maximum capacity had been specified in other local authorities. The response from Scottish Borders reported that the level of demand for the service had never been such that a cap on the numbers of referrals was necessary, and East Lothian reported that workers 'just deal with as many reports as we are asked for'. It was noted that take up of available diversion arrangements in the Ayrshires had been very low, in spite of efforts on the part of social work staff to create a presence in the courts and raise awareness amongst local Procurators Fiscal, leading to speculation that, as in the Scottish Borders, the absence of any real test of capacity makes it difficult to provide an estimate of maximum caseload.

Client characteristics

5.11 Respondents were asked if there were any key criteria that individuals had to fulfil in order to be referred to their diversion scheme. Five stated that there were limiting criteria vis-à-vis the offences that individuals had committed and that those who had been charged with sex offences or offences relating to domestic violence would not be eligible for the scheme. Glasgow added racial matters and sectarian/religiously motivated offences to this list. Two respondents emphasised that diversion had to be consensual, with one stating that those referred to the scheme who believed they were innocent of the charge were encouraged to use their right to defend themselves in court and not participate in the scheme. A further two specified key groups of individuals that they were particularly keen to be referred to their schemes, including: young people; those with low level addiction issues; those with learning difficulties or mental health problems; and women.

¹³ During the interview at the Edinburgh Procurators Fiscal Office it was stated that there was an expected turnaround time of one month for cases (see Chapter Four of this report)

Dumfries and Galloway further emphasised that it would be appropriate for the scheme to receive those individuals with previous involvement in the Children's Hearing System or with social work services, where continuing intervention may be available to deter transition to the adult justice system. See Chapter Four for more details on the types of offenders Fiscals look to divert.

Activities on the schemes

5.12 The questionnaire also sought to determine what it is that divertees do on each scheme. Schemes in Lothian and Borders and Glasgow appeared to have adopted a very similar approach in that the diversion worker acted as a referral point, undertaking a needs assessment with each divertee, offering general advice and guidance on the issues relating to their offending behaviour, and referring the divertee on to established social work services and other existing forms of support relevant to the identified needs. Examples of the kinds of services and support divertees were referred to included children and families social work, community care, alcohol/drug addiction counselling, housing, and money advice. One diversion worker described the way of working with divertees in her local authority as akin to previous practice in social work when intake assessment teams were in place, and argued that this allowed the scheme to offer a quality service tailored to individual need. Moreover, this worker felt that current practice represented the most appropriate method of working with the divertees she came into contact with as the offences committed and the circumstances surrounding them were symptomatic of unmet need. Addressing this was felt to be the most productive approach in diversion.

5.13 In two of the Ayrshire local authorities divertees were offered supports as required but also had to undertake individual offence focused work with their diversion worker. There are similar practices in the Scottish Borders where some divertees are given one-to-one anger management or alcohol education work provided directly by the diversion worker. Whether this is qualitatively different to the type of service offered in the three local authorities above is unclear. Further research would be required here to determine the similarities and differences between the schemes described.

5.14 The Dumfries and Galloway Youth Justice Diversion from Prosecution Scheme appears markedly different and was described in the questionnaire return as offering a structured educational based groupwork programme. This is a programme designed and provided exclusively for divertees. Further documentation revealed that the programme was 6 weeks long, with each week focusing on a different issue, such as: offending behaviour/victim awareness; drug/alcohol awareness; personal

safety/sexual health awareness; antisocial behaviour; and employment/education. Again, it was stated that if the initial assessment of a young person revealed underlying needs, the young person would be referred to appropriate support services.

Aims and objectives

5.15 Respondents were asked to detail the aims and objectives of the diversion schemes. These were broadly similar across the local authorities, although more detail was provided by some than others. All schemes were described as aiming to provide a suitable alternative to prosecution and/or reduce the number of prosecutions in suitable cases involving suitable individuals. Of the nine returns provided by criminal justice social work, all made reference to aiming to provide assistance or support to the individuals diverted in order that the underlying factors or needs relating to their offending behaviour could be addressed. Four refer to reducing re-offending or the re-occurrence of offending behaviour as an aim of the scheme, and Edinburgh and Midlothian state that providing Procurators Fiscal with the information they require to make decisions on how to proceed with cases is a key objective of their scheme.

5.16 The Dumfries and Galloway Youth Justice Diversion from Prosecution Scheme is slightly different as it appears to have one overarching aim of facilitating a reduction in the number of under 18s being prosecuted and, in additional documentation provided to the research team, uses international guidelines and a body of research literature predominantly taken from academic sources to justify and support this aim.

Measures of success

5.17 None of the respondents specified whether or not measures of success in terms of the achievement of aims and objectives were taken. Given the broad nature of the aims detailed above, in particular in respect of achieving increased use of diversion, it is difficult to imagine how individual local authorities would measure their achievement. As local authorities do not hold baseline data and do not know who is *not* being referred to them as a divertee they are not likely to be able to provide such a measure without the assistance of external agencies. Moreover, one local authority stated that an obvious measure of success would be that individuals who were diverted would not continue to offend but raised the question of how this might be measured or tracked.

5.18 With respect to the meeting of need, it was unclear whether the achievement of this was formally recorded or evidenced anywhere. All schemes reported undertaking needs assessments with those diverted (but only two currently made use of a formal risk/needs assessment tool for this purpose). All also developed action plans with divertees, but it is not known if it is recorded whether the action plans proved suitable and successful in allowing the needs of the individual to be met. From the additional documentation provided, the Dumfries and Galloway Youth Justice Diversion from Prosecution Scheme appeared to be getting the young people involved to complete evaluation forms, which captured some satisfaction measures. However the evaluation forms were not included in the documentation provided and it is not possible to speculate further as to their content.

Data and information gathering

5.19 In order to scope out the possibilities for further study, respondents were asked what information they were gathering on the individuals referred to the diversion schemes. All reported gathering information in line with the requirements of the aggregate returns to the annual Scottish Government Criminal Justice Social Work Statistics and five provided evidence that further information was being gathered, stored and analysed for internal monitoring purposes. All of this latter group gathered information on gender, age and index offence for each divertee and were able to provide information on numbers of referrals and numbers of referrals accepted onto the scheme. Moreover Glasgow specifically stated that data on employability was captured, and that details of action plans would be available. Thus there is certainly scope to undertake a wider analysis of diversion patterns than that afforded by the annual Scottish Government statistics publications.

5.20 To assess how accessible the data gathered would be for future study respondents were asked to provide details on how information was stored in their local authority. Most stated that a mix of electronic databases and paper case files were used, but demonstrated that the key figures outlined above were predominantly held electronically. On the face of it this would appear to open the door for straightforward data collection in the future, however a number of different databases are utilised across the local authorities, and key elements of information for wider analysis are stored on paper, meaning that the task of data collation would be time consuming. From the small sample of local authorities in this study, the following databases were cited: Excel; Access; SWIFT; and careFIRST. The lack of consistency in the ways data is stored across local authorities is a perennial difficulty in Scotland and any future research proposals would have to allow time to address the issues raised by this.

Conclusion

5.21 The audit of schemes for diversion from prosecution to social work has revealed some interesting facts about the current provision in a sample of local authorities. It appears that diversion practice within local authorities is very similar in terms of aims and objectives and methods of working with divertees, with all adhering closely to the recommendations of the Stewart Committee Report (1983) and emphasising unmet need as a factor in certain offending behaviour. Moreover, Dumfries and Galloway provides an example of innovative practice in relation to young first time offenders which could provide a useful model for considering the further development of diversion provision in other local authorities.

5.22 However, while similarity in the nature of provision exists, there are also wide discrepancies. This is particularly the case in relation to the take up of diversion schemes in the different local authorities. While Edinburgh and Midlothian report that the scheme regularly runs at capacity, referrals to the Ayrshire schemes are few and far between. However, as the provision of social work based diversion is relatively new in some areas it is not known whether or not Fiscals in Ayrshire are using some kind of alternative form of diversion and it is the belief of the research team that a broader study, possibly involving comparisons of case marking, would better inform this discussion.

5.23 In terms of effectiveness of the social work diversion schemes currently operating, it would appear that there is little systematic gathering of evidence being undertaken. Only one scheme reported that measures of effectiveness were being taken, but even here the measures were based on client satisfaction. While it is important to gather such information, this does not provide a sense of what happens to divertees once the intervention is over.

5.24 In sum, the operation of the schemes and the arrangements for provision have been rendered much clearer by the exploration detailed above, but there are many outstanding issues and questions that have been raised by the work undertaken. In terms of scoping the possibilities for a broader examination of the provision of diversion this study has demonstrated that there is potential for further data gathering and analysis, both within the sample discussed here and on a national basis.

6. CONCLUSION

6.1 This report has drawn out a number of important findings concerning the use of diversion from prosecution to social work across Scotland and particularly with regard to practice in the three CJAs selected for the study. While it was used first and foremost as a scoping exercise the study's findings already point to some interesting policy implications.

6.2 An observed decline in the numbers of cases diverted from prosecution to social work was the key driver behind this study. However examination of available data demonstrates that while there were absolute and relative declines in the number of cases diverted between 2005/06 and 2007/08, this did not continue into 2008/09 and, viewed in the longer term, the observed decline does not appear to be a particularly significant trend. Moreover, the findings reported here highlight that practice or events in a relatively small number of local authorities (for example the comparatively high level of use of diversion in Edinburgh and Midlothian, and the 'bedding in' of a new diversion scheme in Dumfries and Galloway) are likely to have quite dramatic effects on the Scotland-wide picture.

6.3 This theme of 'locality' has recurred throughout this study. Diversionary practices are predicated upon good working relationships between local social work and the Procurator Fiscal, and by 'buy-in' from the Fiscal office. Practice has apparently developed internally and 'from the ground up', a process that has been dependent upon the commitment of individuals on both sides rather than from guidance from the top down. As practice has emerged in this way it is not surprising that the working arrangements, while providing a degree of structure as required by the formal processes of justice, are largely informal and thrive on the basis of good personal relationships between those leading the diversion schemes and those in the Fiscal offices. These relationships, and the facilitation of open communication between those concerned, apparently negate the need for formal feedback, which is reflected in the relative lack of structured evidencing by social work of the effectiveness of the diversion schemes and processes.

6.4 While schemes themselves have proven to be remarkably similar in terms of their core aims and their methods of working across the local authorities considered here, there are clear differences with regard to provision and uptake. This again highlights the centrality of the relationship between the Fiscal office and the local social work team. Some local authorities have well established diversion arrangements in place. Arrangements in others are in their relative infancy, particularly in the west of Scotland, with the inception of most schemes only having taken place within the last 5 years. Success rates of the newest schemes in terms of

take up by the local Procurators Fiscal has varied, with those in Glasgow and Dumfries and Galloway receiving a relatively high number of cases and those in the Ayrshires receiving a very low number of cases. This difference appears to be largely down to the building of a reciprocal working relationship between social work and the Fiscal office (although further investigation of practice would need to be undertaken to fully grasp this situation). Areas with high take up show high levels of collaboration and areas with low take up report difficulty on the part of social work in engaging with the Fiscal office.

6.5 In short, patterns of working are highly localised and are likely to remain so without the development of some kind of overarching policy or explicit commitment to the use of diversion to social work, whether it be Scottish Government, COPFS or CJA driven. This is not to say that the local development of services has not been successful, but if the intention is to increase the level of use of diversion to social work in Scotland as a whole it appears important to provide for an increase in availability of provision. This would remove some of the existing structural constraints which operate on Fiscals. That said there is strong evidence that Procurators Fiscal deal with diversion on a case-by-case basis and so fluctuations in the use of diversion may ultimately be down to the types of cases coming before them. However, the research findings also indicate that top down guidance from COPFS might be crucial in increasing the use of diversion to social work in areas where it is currently little used. The development and fostering of reciprocal working arrangements between Fiscal offices and social work teams, where these do not already exist, would be vital.

6.6 Above all, the pattern of use of diversion to social work in a small country like Scotland will inevitably continue to be affected by local variation. But it is possible that there are steps that could be taken to help ensure more equal provision and take up of diversion schemes. Moreover, the study has shown that there is plenty of scope, in terms of research questions and available information, to carry out a more in-depth examination of the use of diversion from prosecution to social work and better inform any approaches that may be taken to support its continuation.

APPENDIX ONE: QUESTIONS FOR AUDIT OF DIVERSION FROM PROSECUTION TO SOCIAL WORK

The Scottish Government have requested that the SCCJR undertake a small-scale research study on the use of social work related diversion schemes by Procurators Fiscal in Scotland. We have been tasked with investigating the change in the numbers of cases being diverted from prosecution since 2006. One strand of this project is to provide a map of availability of social work diversion schemes. In order to develop this map we have put together the following questions:

1. How many CJSW diversion schemes/projects were running in your local authority in the following years?
2006/2007
2007/2008
2008/2009
2009/2010
2. For each scheme/project please could you provide the following information?
 - Scheme/project name
 - Start date
 - End date (if scheme/project is no longer in operation)
 - Does/did the scheme/project have a maximum capacity? If so, what is/was this?
3. If a scheme/project is no longer operating please could you briefly explain the reasons for this?
4. Could you provide the following information for each scheme/project detailed above (including those which are no longer operating)?
 - a) Does/did each scheme/project gather any information about the individuals referred? If so, what information do you have? E.g. numbers of referrals, types of crimes, age, gender etc.?
 - b) How is/was information about individuals stored? (Paper case files, an electronic database, or both? If you have information stored on a database, please specify what kind of database you are using.)

- c) What the specific aims and objectives of the scheme/project are/were and whether any measures of achievement of the aims and objectives, or any other successful outcomes are/were undertaken.
 - d) Any key criteria that individuals must fulfil in order to be referred to the scheme/project.
 - e) Any needs or risk assessments carried out for those referred to the scheme/project. Please specify which tools are/were used.
 - f) What do/did participants do on each scheme/project? Do/did they undertake unpaid work? Or do/did they take part in structured programmes designed to address need?
5. If you cannot provide the information detailed above, could you provide us with the contact details for individuals (such as individual scheme/project managers or administrators) who may be able to?

Thank you very much for participating in this study. If there is any information that we have not requested here that you think would be important for us to consider, please just let us know.

APPENDIX TWO: SCHEDULE FOR COPFS INTERVIEWS

The Scottish Government has requested that the SCCJR undertake a small-scale research study on the use of social work related diversion schemes by Procurators Fiscal in Scotland. We have been tasked with investigating the change in the numbers of cases being diverted from prosecution since 2006. One element of this study is to interview key stakeholders (i.e. Procurators Fiscal, Criminal Justice Social Work managers, and managers of individual diversion schemes or projects). These are the areas we wish to investigate in relation to COPFS:

Communication with Criminal Justice Social Work

- How many social work related diversion schemes or projects, operating in your local area, are you aware of?
- How do you find out about the availability and capacity of these schemes or projects?
- What mechanisms are in place for feedback about individuals diverted to schemes or projects?
- What is your opinion on the effectiveness of these schemes or projects?
- Is this based on formal feedback, anecdotal evidence or something else?
- Does your opinion vary according to the nature of the scheme or project, or by the nature of the offence an individual has committed? Or by any other factors?

COPFS Policies

- Are there any policies (either national or office specific) relating to the use of diversion to social work related schemes and projects?
- What is the pattern of diversion to social work related schemes and projects in your particular office?

Decision Making Process

- What influences or informs the decision to divert to social work?
- Has this changed in recent years?
- Would you like to see diversion to social work used more or less often, or are you satisfied with current rates?
- Is there anything that might encourage increased use of diversion to social work?

Communication with Police

- Does your local police force operate any diversion schemes or policies?
- If so, does this have any bearing on the decision of the Procurators Fiscal in this area to divert an individual?
- Do you have any correspondence with police officers, either generally or regarding specific cases, about the use of diversion?